IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

WP(C).No. 2123 of 2006(C)

PETITIONER:

V.V. PADMANABHAN,
RETIRED PRINCIPAL, G.H.S.S. MADIKAI,
ANCHARIPPAD, P.O. ANNUR, VIA. PAYYANNUR,
KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN
SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS:
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1. THE PRINCIPAL,
V.P.P.M.K.P.S. G.V.H.S.S., TRIKARIPUR,
P.O. TRIKARIPUR, KASARAGOD DISTRICT.

2. THE DEPUTY DIRECTOR OF EDUCATION,
KASARAGOD.

BY GOVERNMENT PLEADER SRI.T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.C.NO.2123/06

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF GOVT. ORDER BEARING NO. G.O.(P) 347/2000/G.EDN, TRIVANDRUM DATED 19-10-2000**
EXT.P2	**TRUE COPY OF REQUEST SUBMITTED BY THE PETITIONER TO THE SECOND RESPONDENT DATED 24-8-01**
EXT.P3	**TRUE COPY OF THE ORDER BEARING NO.A1/18789/20001 DATED 12-8-02 ISSUED BY THE SECOND RESPONDENT.**
EXT.P4	**TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE FIRST RESPONDENT BY THE PETITIONER.**
EXT.P5	**TRUE COPY OF LAWYER NOTICE ISSUED BY THE PETITIONER TO THE FIRST RESPONDENT.**
EXT.P5(A)	**TRUE COPY OF POSTED RECEIPT OF P5**
EXT.P6	**TRUE COPY OF THE REPLY ISSUED FROM FIRST RESPONDENT DATED 25-3-03, TO PETITIONER.**
EXT.P7	**TRUE COPY OF OFFICIAL NOTE ISSUED BY THE SECOND RESPONDENT TO THE FIRST RESPONDENT.**
EXT.P8	**TRUE COPY OF FINAL LEGAL NOTICE ISSUED FROM PETITIONER TO THE RESPONDENTS.**
EXT.P8(A)	**TRUE COPY OF THE POSTAL RECEIPT EVIDENCING RECEIPT OF EXT.P8**
EXT.P8(B)	**TRUE COPY OF THE POSTAL ACKNOWLEDGMENT CARD EVIDENCING RECEIPT OF EXT.P8**
EXT.P8(C)	**TRUE COPY OF THE POSTAL ACKNOWLEDGMENT CARD EVIDENCING RECEIPT OF EXT.P8**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.2123 OF 2006

Dated this the 13th day of February,2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner entered service as Primary School Teacher on 02-11-1968. He was promoted to High School as High School Assistant on 17-11-1972 and later he was promoted as Higher Secondary School Teacher. His pay was re-fixed reckoning the primary service along with High School Assistant service and he availed the benefit. Thereafter, following the judgment of this court, the benefit which he had availed was refunded. Government passed Ext.P1 order. According to the petitioner grade was due prior to the cut off date namely 18-11-1993 and he was entitled to the benefit.

2. Petitioner preferred a request before the second respondent for grant of such benefit. Ext.P3 is the order issued by the second respondent. He would contend that as per Ext.P3 second respondent has made it clear that he is entitled to the benefit. Copy of Ext.P3 was forwarded to the first respondent for the purpose of releasing the benefit. No action was taken on his part.

3. Petitioner preferred Ext.P4 representation and lawyer notice also as Ext.P5. It is stated in Ext.P6 reply given by Smt.Marykutty that the matter is referred to the second respondent for necessary clarification. Ext.P7 is the note issued by the second respondent. It is stated that inspite of all correspondences, no payment was made. Ext.P8 is the final notice issued.

4. Counter affidavit is filed by the first respondent, where in it is inter-alia stated as follows:

> "It is submitted that as regards Ext.P7 it may be submitted that even in Ext.P7 there is no specific direction to the Principal to draw and disburse the arrears stated to have been due to the petitioner. Ext.P7 is vague and on enquiries made by this deponent with the higher authorities and the office of the Accountant General he has been advised that if any amount is drawn and disbursed without specific orders from the Deputy Director of Education to the effect that the amount found to be in arrears shall be cashed in favour of the petitioner, the same would render this deponent liable for disciplinary action and that such amount would be a charge on the DCRG of this deponent. It was on account of the absence of clear and unambiguous order for payment of arrears on account of the re-fixation of the grade benefits to the petitioner, that this respondent could not effect payment of arrears to the petitioner.
>
> It may respectfully submitted that on receipt of Ext.P8 lawyer notice the petitioner was appraised of the fact that the non-disbursement of the amount stated to be in arrear is due to the absence of a conspicuous and specific order from the Deputy Director of Education or the Government for payment of arrears. Though the

> petitioner was requested to furnish concrete orders in that respect nothing has been done by the petitioner for the last about two years.
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> It is humbly submitted that this respondent is ready and willing to disburse the amount shown to be in arrears to the petitioner provided a specific directing in this regard is issued by the Deputy Director of Education or the Government or by this Hon'ble Court. There is no wilful laches or negligence on the part of this respondent to release the amounts and the same is only on account of the absence of specific direction from the superior officers."

5. When the matter came up today, learned Government Pleader submits that Deputy Director has issued direction to the Principal to draw and disburse the amounts due to the petitioner as per Ext.P3. It is pointed out by learned counsel for the petitioner that there is gross delay on the part of the first respondent and the petitioner was put to great difficulty. It is pointed out that despite Ext.P8 notice being sent in personal capacity, there was no reply also by the first respondent, who is the first addressee in Ext.P8.

6. Learned Government Pleader would point out on instructions that the first respondent had not sought any instructions in writing. In the light of the submission that the Deputy Director has issued direction to the Principal to draw and disburse the amount due to the petitioner as per Ext.P8, there can be no objection in the amount being released to the petitioner.

Accordingly, the writ petition is disposed of directing the first respondent-Principal to draw and disburse the amount due to the petitioner as per Ext.P7 as expeditiously as possible and at any rate, within six weeks from the date of receipt of a copy of this judgment. This is a case where petitioner had issued lawyer notice as Ext.P8. There was no response. Even after receipt of the lawyer notice, in view of the admitted position that the first respondent did not seek instructions in writing, petitioner was driven to this court. In such circumstances, I would think that interest of justice would be satisfied if the first respondent is directed to pay costs. Accordingly, the first respondent will pay costs to the petitioner which is quantified at Rs. 1500/- (Rupees one thousand five hundred).

Writ petition is disposed of in the above terms.

K.M.JOSEPH.
JUDGE.

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